IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1279 of 1996

in

SPECIAL CIVIL APPLICATIONNo 3027 of 1989

with

CIVIL APPLICATION NO.2743 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMPETENT AUTHORITY ULC

Versus

CHAITALI CO-OP HOUSING SOC LTD

Appearance:

1. LETTERS PATENT APPEAL No. 1279 of 1996

MR A.J.DESAI, AGP for the Appellants

MR MUKESH R SHAH for the Respondents

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 13/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI)

1. The appellants have challenged the order of the learned Single Judge allowing the petition of the respondents in which they had challenged the order of the competent authority passed on 18-11-1986, at Annexure "F" to the petition, and the revisional order made on 11-3-1988, at Annexure "H" to the petition, confirming that order by which certain lands of the respondents society were declared as surplus, as a result of which, consequential action was taken under Section 10(3) of the Urban Land (Ceiling & Regulation) Act, 1976.

2. The facts, which are not controverted, are that the respondent No.1 society was registered on 2nd May 1980. It purchased four plots of lands under different sale deeds on 10th May 1982 after permission was granted to the vendors on 2nd March 1982 under the provisions of Section 26 of the said Act. According to the respondent No.1, the permission was obtained for sale of these plots to the society which was already registered. The total holding of the respondent society on these purchases being made was 5969 sq. mtrs. Thereafter, a declaration came to be filed by the society under the provisions of Section 6(1) read with Section 15(1) of the Act. The competent authority found that the society was holding land to the extent of 6427.927 sq. mtrs. and declared land admeasuring 4927.925 being as excess as per the impugned order at Annexure "F" to the petition. Thereafter, the possession came to be taken over under Section 10(5) of the Act on 23rd February 1987 and it appears that, at that stage, the respondents moved the government invoking its revisional powers against the order at Annexure "F" to the petition. That revision application came to be rejected on 11th March 1988, as per the order at Anenxure "H" to the petition.

3. The learned Single Judge, in a well reasoned order, held that the respondent No.1 society was a cooperative society which was governed by the provisions of Section 19(1)(v) of the Act, and therefore, was

entitled to hold such lands beyond the ceiling limit by virtue of exemption from operation of the provisions of Chapter III of the Act. A direction was issued to the appellants to restore the possession to the society while setting aside the impugned orders.

4. The only contention which was raised before us on behalf of the appellants is that the respondent No.1 society was not in existence on the date of the commencement of the Act i.e. 17th February 1976 since it came to be registered on 2nd May 1980. Therefore, the exemption, which was applicable to a registered co-operative housing society under Section 19(1)(v) of the said Act, did not apply to any society which was not in existence on the date of the commencement of the Act. It was submitted that the word "being" in the expression "in co-operative society, being ..... a housing co-operative society ..... " indicated that such society should have been in existence on the date of the commencement of the Act. It was submitted that not only the said society was not in existence on the date of the commencement of the Act, even the purchase of the plots of land in question was made by the society under the sale deeds registered on 21st May 1982. It was argued that the permission granted to the vendors under Section 26(1) of the Act did not absolve the respondent No.1 purchaser from the applicability of the provisions of the Act and the lands having become surplus in the hands of the purchaser were liable to be declared as excess land. He, therefore, supported the impugned orders of the competent authority, at Annexure "F" and the revisional order, at Annexure "H", upholding it.

5. The learned counsel appearing for the respondents submitted that the respondent No.1 society, even if it was registered after the commencement of the Act, was entitled to claim exemption as contemplated by the provisions of Section 19(1) of the Act since it was a registered co-operative housing society falling under clause (v) of Section 19(1) of the Act. He also submitted that the permission granted under Section 26 to the owners of the vacant land, which was sold to the respondent society, was specifically given for selling the lands to the society and therefore, the fact that these lands would be in excess of the prescribed ceiling area in the hands of the purchaser was known to the competent authority; and it is only because of the provisions of Section 19(1) which entitled a co-operative housing society to hold the land in excess of the ceiling area that the permission so given. The learned counsel supported the reasons given by the learned Single Judge

for setting aside the impugned orders at Annexure "F" and "H" to the petition.

6. The provisions of Section 19(1)(v) of the Act, which fall for our consideration, read as under :

"19. Chapter not to apply to certain vacant lands -

(1) Subject to the provisions of sub-section-(2), nothing in this Chapter shall apply to any vacant land held by -

(i) xxxxx

(ii) xxxxx

(iii) xxxxx

(iv) any co-operative society, being a land mortgage bank or a housing co-operative society, registered or deemed to be registered under any law relating to co-operative societies for the time being in force :

Provided that all the exemption under this clause, in relation to a land mortgage bank, shall not apply to any vacant land held by it otherwise than in satisfaction of its dues;

(v) xxxxx "

7. The question that arises for our consideration is as to whether a co-operative housing society contemplated under clause (v) of Section 19(1) of the Act ought to have been in existence on the date of the commencement of the Act. The vacant land held by the entities enumerated in Section 19(1) were exempted from the provisions of Chapter III of the Act which provided for ceiling of the vacant. There is no indication in Section 19(1) that its operation was confined only to the entities which already existed on the date of the commencement of the Act or that the provisions were applicable only in respect of the lands held on any particular date. Section 19(1) clearly takes within its sweep all vacant lands held by any of the enumerated entities without any reference to the time when the entities came into existence. The word

"being" used in clause (v) of section 19(1) of the Act has not been used in the sense of coming into existence of a co-operative housing society, but it has been used to describe the type of the co-operative society to which the provision was intended to apply. Therefore, the expression "any co-operative society, being a land mortgage bank or a housing co-operative society" in clause (v) would mean any cooperative society which in the category of a land mortgage bank or of a housing co-operative society, and the expression "being" in the said clause has nothing to do with the point of time when such society came into existence, namely, whether it was already in existence at the time of commencement of the Act or came into being thereafter. Therefore, notwithstanding the fact that a housing co-operative society came into being after the commencement of the Act, since the society was of the nature of a housing co-operative society, the provisions of clause (v) of Section 19(1) of the Act were attracted and therefore, the provisions of Chapter III could not be applied to any vacant land held by such a society.

8. The fact that the provisions of clause (v) of Section 19(1) were applicable also to a co-operative housing society coming into existence even after the commencement of the Act, is borne out by a mere look at the other clauses which refer to the entities such as government companies, military institutes, banks, charitable or religious trusts, educational, cultural, technical or scientific institutions etc. It could not be the intention of the Parliament to create a dichotomy of allowing the institutions which already existed on the date of the commencement of the Act to hold vacant land without any limit and not allowing similar benefit to the institutions coming into existence thereafter. In other words, the exemption granted under Section 19(1) was not intended to create any classification of the entities which were in existence as on the date of the commencement of the Act and those which came into existence thereafter. No such discrimination could have been intended by the Parliament while extending exemption under Section 19(1) by reference to the categories of the entities which are named in various clauses thereunder. Limiting the benefit of exemption under Section 19(1) only to the entities, which were in existence on the date of the commencement of the Act, would, in our opinion, defeat the very purpose of granting such exemption, and the entities which come into existence under Section 19(1) would be unjustifiably denied the benefits, which were meant to be extended to their category.

9. For the foregoing reasons, we find ourselves in full agreement with the reasoning adopted by the learned Single Judge for allowing the petition and quashing orders of the competent authority and revisional authority. The appeal is, therefore, dismissed with no order as to costs.

The Civil Application No.2743 of 2003 also stands rejected in view of the above order.

[R.K.ABICHANDANI, J.]

[D.A.MEHTA, J.]

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